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July 10, 2006

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: D.T.E. 06-8 – Investigation by the DTE on its own Motion to Establish Retail Billing and Termination Practices for Telephone Carriers

Dear Ms. Cottrell:

Enclosed for filing in the above-referenced proceeding are the original and five copies of Verizon Massachusetts' Reply Comments.

Thank you for your assistance in this matter.

Sincerely,

Alexander W. Moore

cc: Andrea Saia, Esquire
Michael Isenberg, Director-Telecommunications Division
Andrew O. Isar
Gregory M. Kennan, Esquire
Jay E. Gruber, Esquire
Julia E. Green, Esquire
Gregory J. Kopta, Esquire
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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Retail Billing and Termination Practices for Telecommunications Carriers	**D.T.E. 06-8**

REPLY COMMENTS OF VERIZON MASSACHUSETTS

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") files this response to various parties' comments[1] in this proceeding. The general consensus among the telecommunications carriers is that the Department should abandon the overly-restrictive prescriptive rules established almost 30 years ago in D.P.U. 18448 and adopt broad guidelines or principles governing retail billing and termination practices for telecommunications carriers operating in Massachusetts. This approach appropriately reflects today's telecommunications market, in which robust competition provides consumers with many choices of telecommunications providers and types of services (*e.g.*, landline, wireless, DSL, VoIP) to meet their telecommunications needs. It is also consistent with the Federal Communications Commission's ("FCC") development of consumer policy guidelines applicable in a pro-competitive marketplace, as fully explained in Verizon MA's Comments.[2]

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1 In addition to Verizon MA, the following parties filed initial comments in this proceeding: AT&T Communications of New England ("AT&T"); Comcast Phone of Massachusetts, Inc. ("Comcast"); Conversent Communications of Massachusetts ("Conversent"); CMRS Providers (Cingular Wireless, Sprint-Nextel, T-Mobile and Verizon Wireless); Millar Isar, Inc. (on behalf of non-facilities based interexchange carrier clients); National Consumer Law Center ("NCLC"); Office of the Attorney General ("Attorney General" or "AG"); XO Communications Services, Inc. ("XO"), and Level 3 Communications, LLC (Level 3).

2 *See* Verizon MA's Initial Comments, Sec. B. *See also Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 F.C.C.R. 7492 (1999) ("*TIB Order*"); *see also Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory

The carriers also uniformly agree that the Department should not expand its billing and termination guidelines to business, interstate, and non-regulated services, such as wireless and Voice over Internet Protocol ("VoIP") access. There is no basis or need to substitute government mandates for the free-working of these competitive markets.

Given the rapid and continuing expansion of competition in the local telecommunications exchange market, the recommendation of the Attorney General and the National Consumer Law Center ("NCLC") that the Department keep in place the 1977 Rules or impose even more stringent requirements is ill-conceived and would frustrate the Department's long-standing pro-competitive policies. The 1977 Rules were promulgated to regulate a telephone monopoly at a time when residential consumers had no choice of service providers. They are no longer necessary or appropriate in today's competitive environment. As the Department has recognized in a series of policy decisions on the changing telecommunications industry in Massachusetts, an increasingly competitive marketplace should be reflected in *less* – not more – regulation.

In accordance with that longstanding policy, the Department should reject the AG's and the NCLC's positions and instead up-date and replace its 30-year-old billing and termination rules by establishing Guiding Principles that would apply equally to all tariffed, landline telecommunication services provided to the primary local line of a residential customer regulated pursuant to Massachusetts General Laws c. 159, § 12. That approach will protect the public interest and support universal service while enabling carriers to compete effectively in the marketplace.[3]

Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, CG Docket No. 04-208, 20 F.C.C.R. 6448 (2005) ("*Second TIB Order*").

3 Some carriers suggest that the Department should expand this proceeding to review mass migration guidelines (Conversent's Comments at 3-4) or other wholesale practices (Millar Isar's Comments, at 4, 9). However, this is beyond the scope of the Department's *Notice of Inquiry* and should be rejected by the Department. The Department has already determined appropriate carrier-to-carrier guidelines in D.T.E. 02-

DISCUSSION

A. The Department Should Replace The Current Prescriptive Rules With Guiding Principles for Billing and Termination of Residential Services.

The comments of the Massachusetts telecommunications carriers unanimously urge the Department to replace its outdated billing and termination rules with non-prescriptive rules or Guiding Principles. The establishment of Guiding Principles is consistent with the Department's longstanding policies of promoting competition and matching regulatory requirements to the evolution of the market in Massachusetts. Verizon MA Comments at 2-4; AT&T Comments, at 3; Comcast Comments at 2-3.

It is well established that competition – not regulation – is the best means of promoting economic efficiency, advancing technology, and serving customers. Since 1977, and especially since divestiture and then passage of the Telecommunications Act of 1996, competition has flourished in Massachusetts and now provides customers with a broad choice of carriers and types of service offering. In addition, new and emerging technologies, such as broadband, wireless services, instant messaging and Internet access, have further enhanced competition, obviating the need for restrictive and intrusive regulation.

Contrary to the Attorney General's claims, AG Comments at 3, the Department does not need to substantiate the presence or precise level of competition in the telecommunications market by adducing "record evidence" at an evidentiary hearing. This proceeding is a rulemaking, not an adjudicatory proceeding, and the Department does not need a hearing to confirm what is self-evident. The Attorney General can claim that there is no "meaningful

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28 and, there is no justification to re-address them in this forum, contrary to some CLECs' claims. Conversent Comments at 3-4; Millar Isar's Comments at 4-5. Likewise, the request of some CLECs to expand this retail proceeding to investigate wholesale practices relating to service transfers is unwarranted. *Id.* at 9. Those CLECs should not be permitted to expand the scope of this retail proceeding to address unrelated, wholesale issues.

competition" in Massachusetts, AG Comments at 4, only by turning a blind eye to the readily available facts. Most of the parties to this proceeding are carriers who are competing with one another for business in Massachusetts. Their comments reflect no doubt as to the competitiveness of the market. Comcast, for example, states that "Competition is thriving in Massachusetts." Comcast Comments at 3. *See also* AT&T Comments at 1-2 ("Intermodal competition has arrived in force, nationally and right here in Massachusetts.); XO Communications Comments at 1 ("vigorous competition in today's market"); Verizon MA Comments at 1 (1977 Rules do not reflect "the increasingly competitive retail telecommunications market in Massachusetts.)

Moreover, the Department already has sufficient facts before it to conclude that the 1977 Rules no longer reflect the structure of the current telecommunications market, characterized by substantial and growing competition among carriers. Comcast cited FCC data showing that CLECs control approximately 19% of switched access lines nationwide and 25% in Massachusetts, up from 8% in only five years, and that 33 reporting LECs were CLECs. *See* Comcast Comments at 3. These statistics are consistent with the annual Competitive Profiles Verizon MA files with the Department, the most recent of which (filed on February 17, 2006 for the calendar year 2005) confirms the continued and sustained growth of competition in landline portion of the market in the state. In addition, there are alternatives available to customers. For example, there are now as many mobile telephone lines in Massachusetts as there are landlines. *See* Verizon MA Comments at 4. The Attorney General's position that this level of competition – however it is characterized – is insufficient to justify revisions to the 1977 Rules is counterfactual and affords no basis on which to make policy. From any point of view, the telecommunications marketplace in Massachusetts is vastly more competitive now than in 1977 or 1994.[4] Even the NCLC concedes that, "The telecommunications marketplace is far more competitive than 30 years ago, when the Department adopted the current rules and practices ...." NCLC Comments at 5. Accordingly, the Department should avoid the kind of over-regulation that would stifle this steady growth of local exchange competition in Massachusetts and should adopt Guiding Principles for billing and termination of retail services. Comcast Comments at 12.

Continuing prescriptive rules would also place regulated wireline carriers at a competitive disadvantage in the marketplace in relation to other non-regulated service providers, such as satellite and cable companies. AT&T Comments, at 2. The proposed Guiding Principles would avoid these pitfalls while providing adequate protections to residential telephone customers.

There is also a consensus among the various carriers that the Department should not expand the Guiding Principles to include wireless, VoIP, or any other non-tariffed services that are not subject to the Department's existing residential billing and termination rules or are not subject to the Department's jurisdiction at all. Verizon MA Comments at 2, 9; AT&T Comments, at 3; Comcast Comments, at 5-6; XO Comments at 4, Level 3 at 1-2. Likewise, these Guiding Principles should not be extended to additional local residence lines, business services, or in-state long distance services. Verizon MA Comments, at 2; Comcast Comments at 2-3. Indeed, there is no need to increase the level of regulation for business customers who have adequate protections under state law and federal truth-in-billing requirements. Conversent Comments at 2-3.

4 The Attorney General's reliance on the Department's comments in Docket 93-98 in 1994 is misplaced as that proceeding predated the Telecommunications Act of 1996 ("The Act") and the Department's pro-competitive policies implementing the Act, as well as the development and expansion of new technologies such as broadband, wireless, the Internet, and VoIP services. AG's Comments at 2.

B. The NCLC's and Attorney General's Claim that More Stringent Requirements Are Needed To Protect Residential Customers Is Unfounded.

Imposing prescriptive billing and termination requirements on carriers in today's telecommunications marketplace– as the AG and the NCLC suggest - is not necessary to protect consumers. As previously stated, the telecommunications market in Massachusetts has changed dramatically since 1977 and now enables residential customers to choose among a host of service providers, technologies and packages of services. The presence of competitive alternatives, coupled with consumer protections under state law and the FCC's truth-in-billing rules, is sufficient. Verizon MA Comments at 5. Prescriptive billing rules would be superfluous and indeed could stifle competition in the marketplace.

In addition to the consumer safeguards that inevitably result from consumer choice, there are additional protections for low income residential customers. In 1990, the Department adopted the Lifeline program for low income residential customers who meet certain needs-based criteria.[5] Under that program, qualifying customers are entitled to basic telephone service at steeply discounted rates, and there is no need for expanding that protection, as the NCLC incorrectly claims.

Likewise, the NCLC's argument that elderly customers (over 65 years old) should be afforded special protections is outdated and unsupported. NCLC Comments at 32. When the Department adopted its current elderly rules 30 years ago, no Lifeline program existed to protect low-income elderly customers in Massachusetts. Today, elderly customers who are eligible for

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5 The NCLC cites a number of programs that it believes should be part of the Lifeline program. NCLC Comments at 31. As demonstrated in Verizon MA's tariff (DTE Tariff No. 10, Part A, Sec. 1, Pages 27-28, all of the needs-based programs cited by the NCLC already qualify for Lifeline service in Massachusetts.

In addition, the NCLC contends that more publicity and an easier application process are required for the Lifeline and Link-Up Assistance programs. NCLC Comments at 15. This is unnecessary. Lifeline and Link-up Assistance programs are publicized in Verizon MA's white pages directories, and customers are the Lifeline program are afforded the same protections – *e.g.*, a discount on basic telephone service – as other low income subscribers. To single out customers for special treatment or benefits simply because they have reached a particular age – and not in accordance with a needs-based (*i.e.*, Lifeline) program - is unwarranted. *See also*, Comcast Comments at 10. The Department itself has consistently endorsed the principle that universal service policies should be needs-based. *See* MDTE Comments in CC Docket No. 96-45/WC Docket No. 05-337, filed March 27, 2006 at 7 ("the MDTE has long advocated that the universal service high-cost funding should be means-tested and customers in high-cost areas who have the means to pay the true cost of telephone service should not be subsidized by the high-cost fund.") (Footnote omitted). Given the availability of the Lifeline program, it is unreasonable and unfair to perpetuate billing and termination regulations applicable to customers based on age alone and regardless of their ability to pay. The Department should reject the NCLC's argument.

The NCLC's stated concerns about service bundles have no basis in fact. First, the NCLC demands that "(c)ompanies must be prohibited from pressuring residential consumers to buy bundled packages," NCLC Comments at 10, but offers no basis on which to believe that any carriers have so pressured would-be customers. Indeed, Verizon MA provides services only as a matter of customer choice – and the popularity of bundles is driven by the attractiveness of the discounted prices they offer consumers.[6] The NCLC asks the Department to prohibit carriers from imposing early termination fees on bundles, *id.* at 11, but does not claim that any carrier has

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made aware of the availability of these customer assistance programs when they apply for service, in compliance with D.P.U. 89-57-A, (January 17, 1990).

6 In addition, the NCLS's comments on bundled service offerings are inconsistent. NCLC seeks prohibitions on the marketing of bundled service offerings to low-income customers on the grounds that they are "more expensive than basic service" and increase the risk of termination of service for these customers (NCLS Comments at 11) while at the same time arguing that Verizon MA's bundled Freedom package should be made available to low-income Lifeline customers who would economically benefit from such a bundled service offering. (NCLS Comments at 28, fn 43)

actually imposed such fees. Verizon MA's bundles carry no such fees and its customers are free to change from a bundle to basic service only upon request at any time. Nor does Verizon MA disconnect residential telephone service for failure to pay non-telecommunications charges. *Id.* at 12.

Contrary to the NCLC's position, *id.*, a bundle of services should be treated as a whole for billing and termination purposes. This is appropriate because the customer has the option of purchasing the services on a standalone basis. Where a customer chooses a "bundle," she is purchasing a single package of services and enjoys a lower rate than if she had purchased the services *a la carte*. If that customer subsequently fails to pay the monthly rate for that single package, the carrier should be allowed to discontinue service of that package, including all the components of the bundle. As Comcast points out, carriers should not be required to "break apart" the bundle to maintain local exchange service, which can be a costly undertaking. Comcast Comments at 8. No distinction is made at the time of application of service when the customer voluntarily chooses a bundled discounted offering, and similarly no distinction should be made at the time of disconnection regarding the individual prices for the various components of the package.

The NCLC proposes a number of intrusive and onerous billing and notice requirements.[7] For example, the NCLC requests a 30-day customer mailing prior to any change in rates, terms and conditions of any given service and any change in corporate ownership or control. NCLC

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7 The NCLC's comments are also replete with incorrect assumptions regarding billing practices among carriers. For instance, the NCLC recommends certain requirements that reflect practices that are already in effect at Verizon MA. This includes the itemization of taxes and surcharges (*Id.* at 20), the translation of bills into Braille for vision-impaired customers upon request (*Id.* at 24), and the provision of social security numbers ("SSN") (*Id.* at 28). Contrary to the NCLC's claims, Verizon MA does not require a SSN as a condition of service, but rather seeks other forms of valid proof of identity if a customer declines to provide a SSN. *Id.*

Comments at 15. The NCLC also recommends stringent rules for customer payment arrangements. NCLC Comments at 23.

The Department should not interfere with a carrier's dealings with a customer under these circumstances. Rather, carriers should provide advance notice of rate increases, changes in terms and conditions, or changes in ownership consistent with the Guiding Principles, but the form, content, and timing of such notice should not be prescribed. In an increasingly competitive market, carriers must be able to respond quickly with new or modified services and should have the flexibility to communicate with customers through any reasonable method (bill inserts, e-mail, letter, etc.) they deem appropriate. Moreover, currently, telecommunications carriers enter into payment arrangements with residential customers who are unable to pay their bills in full – without regulatory involvement. The terms of such payment arrangements are – and should be - determined by the parties involved, and should not be subject to a minimum time period that may not reflect the customer's ability or willingness to pay, as the NCLC erroneously suggests. NCLC Comments at 13.

A carrier and its customer should also be free to contract for electronic, rather than paper, billing and other communications. The NCLC supports this concept as to billing, NCLC Comments at 20, but seems to object to electronic notification of termination. *Id.* at 30 ("Paper notice of termination must be provided to consumers.") The NCLC raises numerous concerns with electronic communications, but a customer who prefers and has agreed to electronic billing has made a decision in favor of electronic communications, and there is no reason that a carrier should not be allowed to provide other communications to that customer in that form, absent a specific customer request to the contrary. Even the authorities cited by NCLC agree that a carrier "should have the option of providing notice of cancellation via the Internet or other electronic means" in such circumstances. NCLC Comments at 31.

The NCLC's suggestion that carriers should employ deposits as a substitute for proper credit screenings is also unreasonable. *See* NCLC Comments at 26. Carriers – like any other business – should be permitted to conduct credit checks on potential customers. Utilizing a customer's credit scores and reviewing previous payment records are acceptable business methods for determining a customer's credit worthiness. Carriers should not be denied the same ability as non-regulated companies to use these and other reasonable means for credit purposes.

The NCLC insists that carriers provide separate bills for telephone services and for non-telecommunications services, on the grounds that including both types of charges on a single bill "makes those phone bills more complicated and confusing and increases the risks of cramming." NCLC Comments at 22. Many consumers, however, *prefer* a single bill for their telecom and related services, such as voice service, internet access and cable television. Moreover, a single bill for multiple services need be no more complex or confusing than a slew of separate bills for the same services.

Finally, the Department should reject the NCLC's proposal for expanded customer complaint tracking and reporting. NCLC Comments at 33. This is an administratively burdensome requirement that will not be a reliable indicator of service quality. Moreover, it is inherently unfair to impose this tracking and reporting requirement on regulated carriers when competing wireline carriers and non-tariffed services are not subject to the same burdensome requirements.

In sum, the Attorney General's and the NCLC's comments are an inappropriate attempt to over-regulate residential customer billing practices in Massachusetts. In today's increasingly competitive telecommunications market, residential customers and carriers should determine the specific terms of their relationship – within the parameters of the Guiding Principles established by the Department. Accordingly, the Department should adopt its Guiding Principles as the standard for billing and terminations practices for residential customers in Massachusetts among landline carriers.

CONCLUSION

The advent of carrier competition, the development of new telecommunications alternatives and the introduction of the Lifeline Assistance program make it unnecessary for the Department to adopt prescriptive rules to protect residential customers from unreasonable billing and termination practices. Further, the FCC's truth-in-billing rules already control the actions of carriers doing business in Massachusetts, thus obviating the need for the Department to adopt redundant, detailed billing requirements.

The Department should not adopt the Attorney General's and the NCLC's positions, which promote a *circa* 1977, "process-oriented" approach of overly defined billing provisions that unduly restrict carriers' ability to differentiate themselves in the marketplace. Rather, the Department should adopt its Guiding Principles as an overall regulatory framework that adequately protects consumers given the widespread market choice - and is adaptable for carriers in today's ever changing, competitive telecommunications environment.

The Department's Guiding Principles are consistent with the FCC's more flexible approach in establishing its truth-in-billing rules, as well as the Department's decisions that foster competition in the telecommunications industry. In applying those principles, the Department should extend them only to a residential customer's primary local telephone line. These principles should not be expanded to include non-regulated services, such as wireless services and VoIP - which have never been classified as monopoly services and are not subject to the Department's jurisdiction - or to business services, additional residential lines, or long distance services. State and federal law provide sufficient protection, and no detailed rules are warranted as a matter of public policy.

Respectfully submitted,

VERIZON MASSACHUSETTS

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Dated: July 10, 2006